

Senate Bill No. 402

CHAPTER 495

An act to amend Section 2891.1 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 402, Campbell. Telecommunications.

Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but is generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation.

Existing law prohibits a telephone corporation selling or licensing lists of residential subscribers, from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection. Existing law prohibits a provider of mobile telephony services, as defined, or any affiliate or agent of the provider, providing the name and dialing number of a subscriber for inclusion in a directory or directory database, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber. Existing law establishes certain requirements for the provider's form for obtaining the subscriber's express consent, including that the form be a separate document that is not attached to any other document, that the form be signed by the subscriber, and if the subscriber may be billed for unsolicited calls or text messages from a telemarketer, a requirement that the form unambiguously disclose that by consenting to having his or her dialing number included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

This bill would revise the existing requirements for a provider of mobile telephony services to obtain the subscriber's express consent for inclusion of the dialing number of the subscriber in a directory, by additionally

allowing the express consent to be an affirmative response made on a separate field on an Internet Web site where there is no default. The bill would provide that, if express consent is given in this manner, the provider of mobile telephony services would be required to send a confirmation notice to the subscriber's electronic mail address, or to a subscriber's postal mail address should the subscriber not have an electronic mail account.

Existing law prohibits a subscriber from being charged for making the choice to not be listed in a directory.

This bill would instead prohibit a subscriber from being charged for making the choice to not be listed in a publicly available directory assistance database.

The people of the State of California do enact as follows:

SECTION 1. Section 2891.1 of the Public Utilities Code is amended to read:

2891.1. (a) Notwithstanding Section 2891, a telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number. A subscriber may waive all or part of the protection provided by this subdivision through written notice to the telephone corporation.

(b) Notwithstanding Section 2891, a provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, providing the name and dialing number of a subscriber for inclusion in any directory of any form, or selling the contents of any directory database, or any portion or segment thereof, shall not include the dialing number of any subscriber without first obtaining the express consent of that subscriber. The express consent shall meet all of the following requirements:

(1) It shall be one of the following:

(A) A separate document that is signed and dated by the subscriber, and that is not attached to any other document.

(B) An affirmative response made on a separate field on an Internet Web site where there is no default. The provider of mobile telephony services shall send a confirmation notice to the subscriber's electronic mail address, or to a subscriber's postal mail address if the subscriber does not have an electronic mail account.

(2) It shall be unambiguous, legible, and conspicuously disclose that, by opting in, the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers and the subscriber's dialing number may be included in a publicly available directory.

(3) If, under the subscriber's calling plan, the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall include an unambiguous and legible disclosure statement that, by consenting to have the subscriber's dialing number sold

or licensed as part of a list of subscribers or included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(c) Nothing in this section prohibits a subscriber of mobile telephony services from voluntarily entering into an agreement for the placement of his or her name and mobile telephony dialing number in any advertising program if the agreement satisfies the express consent requirements of this section.

(d) A subscriber who provides express prior consent pursuant to subdivision (b) may revoke that consent at any time. A provider of mobile telephony services shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.

(e) A subscriber shall not be charged for making the choice to not have their name and mobile telephony dialing number be listed in a publicly available directory assistance database.

(f) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the agency are supervised by the commission, exclusively for the collection of unpaid debts.

(2) (A) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(B) Any information or records provided to a private for-profit agency pursuant to this subdivision shall be held in confidence by that agency and by any individual employed by or associated with that agency. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in subdivision (e) of Section 2872 or this paragraph.

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) To a telephone corporation to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services.

(6) To the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(g) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

(h) For purposes of this section, “unpublished or unlisted access number” means a telephone, telex, teletex, facsimile, computer modem, or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.

(i) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.